

MAIL STOP APPEAL BRIEF
PATENT
0579-1097

IN THE U. S. PATENT AND TRADEMARK OFFICE

In re application of

Jean-Bernard FISCHER et al.

Conf. 5286

Application No. **10/540,219**

Group 2431

Filed January 17, 2006

Examiner M. Vaughan

METHOD AND DEVICE FOR MAKING SECURE EXECUTION OF A COMPUTER PROGRAMME

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

November 1, 2010

Sir:

Appellants request a pre-appeal brief review of the final rejection in the above-identified application. No amendments are being filed with this request.

A Notice of Appeal is filed herewith.

The review is requested for the reasons advanced on the attached sheets.

Respectfully submitted,

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REASONS IN SUPPORT OF REQUEST FOR REVIEW

Claims 1-9, 11-21, 23-30, 32, 33, 35-40 are pending.

Claims 1, 17 and 26 are the only independent claims and all are subject of the present request for pre-appeal brief review.

Claims 1-4, 8, 9, 11-21, 23-28, 32, 33, and 35-40 stand rejected as anticipated by Naccache, U.S. Patent No. 7,168,065.

On pages 5 and 6 of the Office Action, it is asserted that Naccache, col. 9, lines 25-30, 34-40 and 51-55 disclose "wherein said set of instructions comprises at least ***one first instruction*** for initializing the calculation of the second signature, at least ***one second instruction*** depending upon for controlling the calculation mode of the second signature, ***and a third instruction, different than the at least one second instruction***, for comparing the second signature obtained according to the at least one second instruction with the first signature" (emphasis added) as in claim 1.

Naccache explicitly states that "the use of the monitoring unit requires the addition of ***two new instructions*** to the n instructions ... of the program" (col. 9, lines 18-20). One of the instructions is used to initialize the calculation of a signature (col. 9, lines 27-28) while the other one is used to finalize the calculation of the signature and to compare the obtained value with a reference value (col. 9, lines 61-64).

According to Naccache, the signature is based upon a hash function (col. 10, lines 64-67). However, it is also mentioned

that, as a variant, other functions can be used, in particular a CRC function (col. 5, lines 53-58).

Thus, Naccache only discusses the use of ***two monitoring instructions in the computer program that execution is made secure*** (see Naccache col. 9, lines 18-19) and further instructions in the monitoring computer program (see Fig 3), the claimed invention is directed to ***three monitoring instructions in the computer program that execution is made secure.***

Furthermore, according to Naccache, the two instructions added in the computer program that execution is made secure are used to identify the first and last instructions that should be monitored, independently of the monitoring *per se*.

Accordingly, one of ordinary skill in the art would not be prompted to modify the teaching of Naccache to indicate, within the instructions of the computer program that execution is made secure, how the instructions should be monitored. Moreover, adding further monitoring instructions within the instructions of the computer program that execution is made secure would have been meaningless since such monitoring instructions would have been ignored by the disclosed monitoring method. Indeed, the monitoring method of Naccache is only looking for a first and a second monitoring instructions (see Figs. 3 and 4), the other instructions being monitored instructions. As a consequence, the invention as claimed cannot derive obviously from Naccache.

For at least the reasons discussed above, claims 1, 17

and 26, and the claims dependent therefrom are not anticipated by Naccache.

Withdrawal of the rejections is respectfully requested.

Claims 5-7, 29 and 30 stand rejected as obvious over Naccache. Claims 5-7, 29 and 30 are allowable as being dependent from allowable base claims.

Withdrawal of the rejections is respectfully requested.